

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

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SENATE BILL NO. 96

Introduced by: Senators Shoener, Hutmacher, Lawler, and Paisley and Representatives Roe and Fischer-Clemens

1 FOR AN ACT ENTITLED, An Act to regulate certain service contracts and to provide for the
2 enforcement of the Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Contract holder," a person who is the purchaser or holder of a service contract;

6 (2) "Maintenance agreement," a contract of limited duration that provides for scheduled
7 maintenance only;

8 (3) "Mechanic breakdown insurance," any contract or agreement to perform or indemnify
9 for a specific duration the repair, replacement, or maintenance of property for
10 operational or structural failure due to a defect in materials, workmanship, or normal
11 wear and tear;

12 (4) "Person," an individual, partnership, corporation, incorporated or unincorporated
13 association, joint stock company, reciprocal, syndicate, or any similar entity or
14 combination of entities acting in concert;

15 (5) "Provider," a person who issues, makes, provides, sells, offers to sell a service
16 contract, or who is contractually obligated to provide service under a service contract;

1 (6) "Reimbursement insurance policy," a policy of insurance providing reimbursement
2 coverage for all obligations and liabilities under the terms of the service contract
3 issued by the provider. All obligations and liabilities of a service contract include
4 terms such as the return of the unearned provider fee in the event of the provider's
5 unwillingness or inability to reimburse the unearned provider fee in the event of
6 termination of a service contract;

7 (7) "Service contract reimbursement policy," a policy of insurance providing full
8 reimbursement coverage for all obligations and liabilities under the terms of the
9 service contract issued by the provider; and

10 (8) "Warranty," a warranty made solely by the manufacturer, importer, or seller of
11 property or services, without charge, that is not negotiated or separated from the sale
12 of the product and is incidental to the sale of the product, and that guarantees
13 indemnity for defective parts, mechanical or electrical breakdown, labor or other
14 remedial measures, such as repair or replacement of the property or repetition of
15 services.

16 Section 2. For the purposes of this Act, the term, service contract, means any contract or
17 agreement to perform or indemnify for a specific duration the repair, replacement, or
18 maintenance of property for operational or structural failure due to a defect in materials,
19 workmanship, or normal wear and tear, with or without additional provisions for incidental
20 payment of indemnity under limited circumstances, including towing, rental, and emergency road
21 service. A service contract may also provide for the repair, replacement, or maintenance of
22 property for damage resulting from lightening, power surges, or accidental damage from
23 handling. Consideration for a service contract shall be stated separately from the price of the
24 consumer product. The term does not include mechanical breakdown insurance or maintenance
25 agreements.

Section 3. Any provider of a service contract issued, sold, or covering property located in this state shall file a registration with the Division of Insurance on a form, at a fee, and at a frequency prescribed by rules promulgated by the Division of Insurance pursuant to chapter 1-26.

Section 4. Any service contract subject to this Act shall conspicuously disclose the following in bold, ten point type or better:

- (1) The complete identity of the provider and the service contract seller;
- (2) The total purchase price of the contract;
- (3) The existence of any deductible amount;
- (4) The procedures to file a claim, including the procedures for obtaining prior approval for repair work, a toll-free telephone number for claim service, and a procedure for obtaining reimbursement for emergency repairs performed outside normal business hours;
- (5) The terms for transferability of the contract;
- (6) The prerequisites for early cancellation;
- (7) The terms, restrictions, or conditions governing termination of the service contract by the service contract holder;
- (8) The obligations and duties of the service contract holder; and
- (9) The authorization of the service contract holder to return the contract within twenty days of its purchase if no claim has been made under the contract and obtain a refund of the full purchase price of the contract.

Section 5. Any reimbursement insurance policy insuring any service contract issued, sold, or offered for sale in this state shall conspicuously state that upon the failure of the provider to perform under the contract, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service that the provider is

1 legally obligated to perform according to the provider's contractual obligations under the service
2 contracts issued or sold by the provider.

3 Section 6. In order to ensure the faithful performance of a provider's obligations to its
4 contract holders, each provider shall file with the Division of Insurance one of the following as
5 proof of financial stability:

6 (1) A surety bond, securities of the type eligible for deposit by an authorized insurer in
7 this state, cash, or letter of credit that has at all times a value of not less than five
8 percent of the gross annual fees from all service contracts issued and in force, but in
9 no case to be less than twenty-five thousand dollars. Such bond, securities, cash, or
10 letter of credit shall be maintained unimpaired as long as the provider continues to do
11 business in this state. If the provider ceases to do business in this state and furnishes
12 the division proof that it has discharged all of its obligations to its contract holders in
13 this state, the division shall release said bond, cash, or letter of credit;

14 (2) Evidence that all of its service contracts are insured through the purchase of a service
15 reimbursement insurance policy issued by a duly licensed insurer authorized to do
16 business in this state; or

17 (3) A copy of the provider's or if the provider's financial statements are consolidated with
18 those of its parent company, the provider's parent company's most recent Form 10-K
19 filed with the Securities and Exchange Commission that shows a net worth of the
20 provider or its parent company of at least one hundred million dollars if the Form 10-
21 K was filed with the Securities and Exchange Commission within the last year. If the
22 provider's parent company's Form 10-K is filed to meet the provider's financial
23 stability requirement, then the parent company shall agree to guarantee the obligations
24 of the obligor relating to service contracts sold by the provider in this state.

25 Section 7. A provider shall maintain a funded reserve account for its liability under its

1 contracts issued and outstanding in this state. No reserve may at any time be less than forty
2 percent of all fees received, less claims paid, on in-force contracts. Any reserve account is subject
3 to examination and review by the Division of Insurance upon request.

4 Section 8. No provider may use in its name, contracts, or literature:

- 5 (1) The words insurance, casualty, guarantee, or surety business; or
6 (2) A name deceptively similar to the name or description of any insurance or surety
7 corporation or any other provider.

8 Section 9. A provider is considered to be the agent of the insurer that issued the
9 reimbursement insurance policy. A provider shall keep accurate accounts, books, and records
10 concerning transactions regulated under this Act for at least three years after the specified period
11 of coverage has expired. These accounts, books, and records shall include:

- 12 (1) Copies of all service contracts issued;
13 (2) The name and address of each service contract holder to the extent that the name and
14 address have been furnished by the service contract holder;
15 (3) A list of the providers and persons marketing, selling, or offering to sell service
16 contracts; and
17 (4) Claims files containing at least the dates, amounts, and description of all receipts,
18 claims, and expenditures related to the service contracts.

19 Section 10. No insurer that issued a reimbursement insurance policy may terminate the policy
20 until a notice of termination in accordance with § 58-6-74 has been mailed or delivered to the
21 Division of Insurance.

22 Section 11. The Division of Insurance may conduct investigations or examinations of
23 providers, administrators, insurers, or other persons to enforce the provisions of this Act. The
24 examinations shall be conducted in accordance with § 58-3-7.1. The division, after proper notice
25 and hearing in accordance with chapter 1-26, may:

- 1 (1) Revoke or suspend the registration of the service contract provider;
- 2 (2) Order the provider to cease and desist from further service contract operations;
- 3 (3) Impose a civil penalty not to exceed twenty-five thousand dollars per violation;
- 4 (4) Make restitution to contract holders; or
- 5 (5) Seek any other legal relief in a court of competent jurisdiction as may be deemed
- 6 appropriate.

7 Section 12. The provisions of this Act do not apply to warranties or maintenance agreements.